

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

APR - 1 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Revision of the Commission's Rules to)

Ensure Compatibility with Enhanced)

911 Emergency Calling Systems)

CC Docket No. 94-102

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF GTE SERVICE CORPORATION

Dated: April 1, 1998

GTE Service Corporation and its affiliated
domestic telephone operating companies

John F. Raposa J27 6969
GTE Service Corporation
600 Hidden Ridge, HQE03
P.O. Box 152092
Irving, TX 75015-2092
(972) 718-6969

Andre J. Lachance
GTE Service Corporation
1850 M Street, N.W.
Washington, DC 20036
(202) 463-5276

Their Attorneys

No. of Copies rec'd
List ABCDE

0411

TABLE OF CONTENTS

	<u>PAGE</u>
SUMMARY	ii
I. DISCUSSION	2
A. The FCC Should Allow Carriers to File Limited FCC Tariffs to Govern the Terms by Which Carriers Offer E-911 Services.....	2
1. Informational Tariffs Have Not Previously Been Considered by the Commission in this Proceeding.	4
2. States Do Not Need to Regulate CMRS Providers to Ensure Reliable, Affordable E-911 Services	5
3. Allowing CMRS Providers to Limit Tort Liability Will Not Mislead the Public.	9
B. The FCC Should Not Require Carriers to Provide E-911 Services in any State that Fails to Adopt Limited Liability Provisions.	11
II. CONCLUSION.....	13

SUMMARY

GTE supports FCC action enabling CMRS providers to limit liability with respect to provision of 911 and E-911 services. In their petitions for reconsideration, BellSouth and CTIA ask the FCC to allow CMRS carriers to file limited FCC tariffs governing the terms by which carriers offer E-911 service. Two parties, the State of Hawaii ("Hawaii") and the Ad Hoc Alliance for Public Access to 911 ("the Alliance") challenge this aspect of the petitions.

GTE supports the request by BellSouth and CTIA to allow carriers to file informational FCC tariffs establishing the terms, including liability limitations, of providing 911 and E-911 service to entities with which there is no carrier-customer contractual relationship. GTE agrees with BellSouth and CTIA that such tariffs are necessary to close a loophole in CMRS carriers' ability to protect themselves from unlimited liability with respect to 911 and E-911 services.

GTE disagrees with Hawaii and the Alliance that the FCC has previously rejected the notion that wireless carriers should be able to limit their liability. This is the first time that carriers have requested the ability to file informational tariffs to limit liability with respect to customers with whom the carrier has no contractual relations. GTE also does not agree with arguments that limited liability will remove incentives to develop accurate, cost effective E-911 services or mislead the public.

GTE also supports BellSouth's request that the FCC amend Section 20.18 of its rules "to make clear that wireless providers are not obligated to provide E-911 within a

state until the state limits the liability of wireless providers regarding the provision of E-911 service.”

GTE has experienced first hand how difficult it can be to get states to pass limited liability measures. Given the extreme difficulties carriers have faced in having limited liability provisions adopted in many states, GTE believes that the FCC should require states to adopt limited liability provisions. Absent such a requirement, many states are unlikely to enact such provisions and states that do adopt some form of liability limitation are unlikely to adopt provisions that offer wireless carriers protection equivalent to the LECs tariffed liability limitations.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's Rules to)	CC Docket No. 94-102
Ensure Compatibility with Enhanced)	
911 Emergency Calling Systems)	

REPLY COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation and its affiliated domestic telephone and wireless companies ("GTE") hereby file reply comments in support of Petitions for Reconsideration filed by BellSouth Corporation ("BellSouth")¹ and the Cellular Telecommunications Industry Association ("CTIA")² in the above captioned proceeding. In their petitions, BellSouth and CTIA ask the Federal Communications Commission ("FCC" or "Commission"), *inter alia*, to take steps to limit commercial mobile radio service ("CMRS") provider liability with respect to provision of basic 911 ("911") and enhanced 911 ("E-911") services.

-
- ¹ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Petition for Reconsideration, filed February 17, 1998, by BellSouth Corporation (hereinafter "BellSouth Petition").
- ² Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Petition for Reconsideration and Clarification of the Cellular Telecommunications Industry Association, filed February 17, 1998 (hereinafter "CTIA Petition").

GTE supports FCC action enabling CMRS providers to limit liability with respect to provision of 911 and E-911 services. GTE also supports BellSouth's proposal that no CMRS carrier be required to provide E-911 services in a state until that state adopts legislation limiting liability associated with providing 911 and E-911 service. In these comments, GTE addresses comments filed by a handful of parties opposed either in-part or in-full to the rule changes requested by BellSouth and CTIA with respect to carrier liability. GTE also relates some of the problems it has encountered working with state legislatures to enact limited liability provisions.

I. DISCUSSION

A. The FCC Should Allow Carriers to File Limited FCC Tariffs to Govern the Terms by Which Carriers Offer E-911 Services.

In their Petitions, BellSouth and CTIA ask the FCC to allow CMRS carriers to file limited FCC tariffs governing the terms by which carriers offer E-911 service. BellSouth and CTIA argue that the Commission has recognized that, like wireline carriers, wireless carriers should have the means to protect themselves from unlimited liability associated with their provision of E-911 services.³ CTIA notes that, "[i]n exchange for public service obligations, and because unlimited tort liability would inhibit investment and could preclude operations altogether, communications common carriers have historically operated with limited liability for transmission services."⁴ CTIA argues that

³ BellSouth Petition at 2; CTIA Petition at 10, both *citing* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Memorandum Opinion and Order*, CC Docket No. 94-102, FCC 97-402 (released December 23, 1997) (hereinafter "*Reconsideration Order*") at ¶ 140.

⁴ CTIA Petition at 11 (citations omitted).

limited liability is especially important in the wireless context, where, given the properties of radio transmissions, there is no certainty that wireless 911 calls will go through.⁵ Moreover, both BellSouth and CTIA note that the FCC requires CMRS carriers to provide 911 and E-911 services to parties placing calls from any mobile handset in their coverage area, regardless of whether that carrier or any other carrier has a contractual relationship with the calling party.⁶ Wireless carriers do not have a means of limiting carrier liability with respect to calls placed by such parties.

To provide CMRS carriers with a means to limit their tort liability with respect to providing 911 and E-911 services, both BellSouth and CTIA ask the Commission to enable CMRS providers to file limited FCC tariffs. Such tariffs would be patterned after the informational tariffs the FCC has adopted in the context of detariffing interstate interexchange carrier services. These tariffs would not be subject to FCC review, would be presumed lawful, and would not require cost support.⁷ BellSouth envisions that these tariffs would establish terms and conditions, including limitations on liability and choice-of-law, for the provision of 911 and E-911 service where there is no existing privity of contract.⁸

⁵ *Id.* at 10. In addition, given the mobile nature of CMRS transmissions, 911 calls may be dropped if the caller moves out of range of a cell site.

⁶ BellSouth Petition at 2; CTIA Petition at 10, 12.

⁷ CTIA Petition at 13.

⁸ BellSouth Petition at 3.

Two parties, the State of Hawaii ("Hawaii") and the Ad Hoc Alliance for Public Access to 911 ("the Alliance") challenge this aspect of BellSouth's and CTIA's Petitions. They argue that (1) the FCC has already considered and rejected requests for limitations on wireless carrier liability in the 911 and E-911 context;⁹ and (2) wireless carriers must be treated differently than wireline carriers in order to ensure that wireless carriers develop, deploy, and operate the safest and most cost-effective E-911 systems.¹⁰ In addition, Hawaii argues that limiting wireless carrier liability would mislead the public concerning the accuracy and reliability of E-911 service.¹¹

GTE supports the request by BellSouth and CTIA to allow carriers to file informational FCC tariffs establishing the terms, including liability limitations, of providing 911 and E-911 service to entities with which there is no carrier-customer contractual relationship. GTE agrees with BellSouth and CTIA that such tariffs are necessary to close a loophole in CMRS carriers' ability to protect themselves from unlimited liability with respect to 911 and E-911 services provided to non-subscribers and entities with which there is no contractual relationship.

1. Informational Tariffs Have Not Previously Been Considered by the Commission in this Proceeding.

Contrary to the assertions made by the State of Hawaii and the Alliance, the FCC has not considered and rejected this particular request. While the FCC has twice

⁹ Hawaii Opposition at 7-9; The Alliance Opposition at 3-5.

¹⁰ Hawaii Opposition at 9; The Alliance Opposition at 6-12 .

¹¹ Hawaii Opposition at 9-10.

visited the issue of CMRS provider liability for 911 and E-911 calls, both times rejecting pleas for a national limited liability standard, the FCC has done so based upon its belief that a national standard was not necessary to protect CMRS providers. While, as noted above, the FCC has acknowledged CMRS providers' need to protect themselves from unlimited tort liability in the provision of 911 and E-911 services, the FCC's actions were based on a belief that CMRS providers may protect themselves from liability by contract – either with customers or with local public safety organizations, and that state legislatures and courts are developing their own solutions to liability issues.¹²

Unlike these previous requests seeking an FCC rule establishing limited liability for wireless carriers, BellSouth and CTIA now seek only limited FCC action. In particular, in response to FCC statements that wireless carriers can protect themselves contractually, BellSouth and CTIA ask the Commission to establish a means by which carriers can protect themselves where such protection cannot be afforded through contractual provisions. This request is wholly consistent with previous FCC statements in this proceeding and with the protection enjoyed by wireline carriers.

2. States Do Not Need to Regulate CMRS Providers to Ensure Reliable, Affordable E-911 Services

Both Hawaii and the Alliance argue that wireless carriers should not receive the same liability limitations enjoyed by wireline carriers.¹³ Hawaii contends that the FCC

¹² Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18727-18728 (1996) (hereinafter "*First Report and Order*"); *Reconsideration Order* at ¶¶ 137-138.

¹³ Hawaii Opposition at 9; The Alliance Motion for Extension of Time at 1-2.

should not preempt a state's right to protect its citizens and to determine tort liability within the state. It argues that wireless carriers should be treated differently than wireline carriers. It states that wireline carriers are accorded limited liability because such carriers' conduct and rates are regulated by the states. As a result, it argues, the capabilities and costs associated with landline 911 and E-911 service are examined and determined by the Hawaii Public Utilities Commission ("HPUC"). It contends that since the state does not have similar regulatory control over wireless carriers, granting such carriers limited liability will diminish their incentive to develop, deploy, and operate the safest and most cost-effective E-911 system.¹⁴

Similarly, the Alliance states that until and unless wireless service providers are subject within a state to the same regulatory burdens as incumbent local exchange carriers, they should not be given the same limitation on liability for 911 and E-911 services as wireline carriers. Incredibly, and with total disregard to Section 332(c)(3) of the Communications Act,¹⁵ the Alliance proposes that limited immunity akin to the immunity protection afforded wireline carriers be given by a state only if wireless carriers agree to become subject to the same categories of regulations that govern the activities of local exchange carriers ("LECs"), including: (1) rate and profit cap

¹⁴ Hawaii Opposition at 9.

¹⁵ 47 U.S.C. § 332(c)(3). This section preempts state regulation of CMRS entry and rates.

regulation or rate of return regulation; (2) grade of service regulation; and (3) universal service provider requirements.¹⁶

Putting aside this ridiculous, unnecessary, and entirely illegal proposal, both Hawaii and the Alliance incorrectly equate the level of common carrier regulation with the level of tort liability immunity a carrier should receive. In so doing, Hawaii and the Alliance completely misconstrue the reason carriers have been allowed limited liability in exchange for common carrier obligations. As CTIA indicates, common carriers are allowed to protect themselves from immunity not in exchange for a particular level of regulation, but in exchange for taking on the duty to provide service to all customers in a nondiscriminatory manner.¹⁷ CTIA states that allowing common carriers to limit tort liability "reflects a policy decision that individuals bear their own losses because the carriers cannot both serve as a vehicle for risk spreading and simultaneously perform their socially critical public service functions."¹⁸ While all common carriers are regulated to some extent, the degree of regulation each carrier faces is tied to the perceived need to monitor a common carrier's activity to protect the public interest. Whatever level of regulation is applied to a carrier, that level has no relation to whether and to what extent a carrier should be given limited immunity.

Hawaii is concerned that if states cannot regulate the E-911 services provided by CMRS providers, such carriers will have a diminished incentive to provide low cost,

¹⁶ The Alliance Opposition at 6-12.

¹⁷ CTIA Petition at 11-12.

¹⁸ *Id.* at 12.

accurate E-911 services.¹⁹ Hawaii's objections to allowing limited CMRS immunity for 911 and E-911 also appear rooted in dissatisfaction with the inability of wireless carriers to pinpoint a caller's location with the same degree of accuracy that wireline service can provide. Thus, Hawaii states that "location of a caller within 125 meters two-thirds of the time will leave emergency response teams looking for the proverbial 'needle in a haystack'."²⁰

Hawaii's concerns are both inappropriate and misplaced. First, carriers obligations with respect to accuracy of service are set by the FCC. FCC rules require CMRS providers, by April 1, 1998, to be able to pass to the public safety answering point ("PSAP") a wireless 911 caller's automatic number identification ("ANI") and the location of the serving base station or cell site.²¹ By October 1, 2001, such carriers will be required to identify the latitude and longitude of a mobile unit making a 911 call, within a radius of no more than 125 meters in 67 percent of all cases.²² The fact that all FCC licensees are required to comply with FCC mandates, the potentially harsh penalties for failing to do so, and, foremost, the desire to satisfy customers, provide all

¹⁹ Hawaii Opposition at 9.

²⁰ *Id.* at 10.

²¹ *First Report and Order* at 18708-18709 (¶ 63). This requirement is subject to (1) the PSAP requesting E-911 service, (2) the PSAP making the investment necessary to receive and utilize the data being passed; (3) the ability of LEC infrastructure to support the service; and (4) the existence of a cost recovery mechanism. *Id.*

²² *Id.* at 18712 (¶ 71).

the incentive carriers need to meet the E-911 standards deemed appropriate by the FCC.²³

Second, if Hawaii or any other state is dissatisfied with the standard adopted by the FCC, its recourse is to challenge that standard in an appropriate forum, not to withhold liability limitations as means of forcing a higher standard on wireless carriers. The FCC has made clear that neither Hawaii nor any other state may impose a different E-911 standard on wireless service providers. While the FCC stopped short of preempting state E-911 regulations, it stated that any state or local government E-911 regulation that is inconsistent with the federal standards is subject to preemption.²⁴

Third, Hawaii's comments show a complete disregard for the state of competition in the CMRS industry. This competition, which includes up to six broadband Personal Communications Service ("PCS") providers, one enhanced Specialized Mobile Radio ("ESMR") service provider, two cellular providers, plus resellers and the prospect of other FCC-licensed competitors on the horizon, provides all the incentive carriers will ever need to cut the costs of providing every aspect of their service, including E-911.

3. Allowing CMRS Providers to Limit Tort Liability Will Not Mislead the Public.

Hawaii contends that allowing CMRS providers to limit their tort liability for transmitting 911 and E-911 calls will mislead the public into believing that CMRS providers offer the same 911 and E-911 capabilities as wireline service providers.

²³ In addition, there may be a number of new applications or services that will be facilitated by the technology put in place to provide E-911 service.

²⁴ *Id.* at 18730 (¶ 105).

Thus, Hawaii is concerned that "a federal mandate limiting liability would continue to mask the unresolved issues of carrier accountability and consumer education."²⁵

GTE shares Hawaii's concerns that the public be informed about the capabilities of wireless 911 and E-911 systems. GTE notes in that regard that in the *First Report and Order*, the FCC recognized the need to explore further means of improving consumer education about the capabilities of wireless 911 and E-911 systems.²⁶ In the accompanying *Further Notice of Proposed Rulemaking*, the FCC sought comment on means to improve customer education and awareness.²⁷ As an initial matter, therefore, GTE questions whether any separate state action to improve customer education is either necessary or appropriate. In addition, GTE does not agree that withholding tort liability immunity is a viable means of addressing the consumer information issue. First, Hawaii has not established any nexus between the level of tort liability and customer expectation regarding 911 and E-911 capabilities. GTE would suggest that little, if any, exists. Second, Hawaii's suggestion that limited tort liability be withheld until wireless providers are able to meet wireline provider location information performance unfairly and unreasonably discriminates against wireless carriers. The FCC has recognized that CMRS service, due to its mobility and technology, presents 911 and E-911 issues

²⁵ Hawaii Opposition at 9-10.

²⁶ *First Report and Order* at 18682 (¶ 9).

²⁷ *Id.* at 18748-18750.

markedly different than wireline service.²⁸ Wireless carriers should not be denied the benefits of limited tort liability solely on the basis of these technological limitations.

B. The FCC Should Not Require Carriers to Provide E-911 Services in any State that Fails to Adopt Limited Liability Provisions.

BellSouth asks the FCC to take steps to require states to adopt limited liability provisions for CMRS providers. In particular, BellSouth asks the FCC to amend Section 20.18 of its rules "to make clear that wireless providers are not obligated to provide E-911 within a state until the state limits the liability of wireless providers regarding the provision of E-911 service."²⁹

In addition to the objections expressed by Hawaii and the Alliance and discussed above, three parties objected to this aspect of BellSouth's Petition. In particular, the National Emergency Number Association ("NENA"), the Association of Public Safety Communications Officials-International, Inc. ("APCO"), and the National Association of State Nine One One Administrators ("NASNA") (together the "Joint Commenters"); KSI, Inc. ("KSI"); and Xypoint Corporation ("Xypoint") oppose delaying the implementation of wireless E-911 services. Although the Joint Commenters, KSI, and Xypoint are either neutral or support wireless carriers' efforts to obtain liability limitations, they do not

²⁸ *Id.* at 18680 (¶ 7).

²⁹ BellSouth Petition at 7. Alternatively, BellSouth suggests that the Commission could clarify that any cost recovery mechanism adopted by a state must contain a limitation on liability.

believe the FCC should delay implementation of E-911 capabilities in a state pending resolution of the liability issue.³⁰

GTE supports BellSouth's request to make carriers' E-911 obligations within a particular state contingent on that state limiting wireless carriers' tort liability with respect to providing 911 and E-911 service. GTE has become increasingly frustrated in its efforts to work with the states to adopt limited liability provisions. Thus, for example, GTE provides cellular service throughout the State of Hawaii. As Hawaii's comments amply demonstrate, the State's position on 911 and E-911 tort liability is not conducive to carrier efforts to achieve limited civil liability in Hawaii. In California, wireless immunity language similar to LEC tariff provisions has been stripped from various state legislature bills in years past. In Florida, the Florida Association of Counties is opposing a stand alone immunity bill that encompasses carriers and PSAPs. In other states, trial lawyers associations are poised to lobby against wireless 911 and E-911 tort liability initiatives just as they have done in defeating tort reform issues advocated by other business interests.

GTE shares the concerns expressed by commenters that E-911 services reach the public as quickly as possible. GTE agrees that delays to providing E-911 service should be avoided if possible. Nonetheless, GTE is of the opinion that given the extreme difficulties carriers have faced in having limited liability provisions adopted in many states, the FCC should require states to adopt limited liability provisions. Absent

³⁰ Joint Commenters Comments at 8; KSI Comments 5; Xypoint Comments at 2. KSI and Xypoint are vendors of wireless E-911 solutions.

such a requirement, many states are unlikely to enact such provisions and states that do adopt some form of liability limitation are unlikely to adopt provisions that offer wireless carriers protection equivalent to the LECs tariffed liability limitations.

II. CONCLUSION

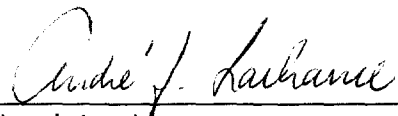
GTE supports FCC action to enable wireless service providers the ability to file informational tariffs to establish the terms and conditions, including liability limitations, under which basic and enhanced 911 services are rendered to entities with whom there are no carrier-customer contractual relations. In addition, GTE supports BellSouth's request that E-911 deployment within a state be conditioned upon that state adopting limited liability measures for wireless carriers similar to provisions contained in LEC tariffs.

Dated: April 1, 1998

Respectfully submitted,

GTE Service Corporation and its affiliated
domestic telephone and wireless companies

John F. Raposa J27 6969
GTE Service Corporation
600 Hidden Ridge, HQE03
P.O. Box 152092
Irving, TX 75015-2092
(972) 718-6969

By 
Andre J. Lachance
GTE Service Corporation
1850 M Street, N.W.
Washington, DC 20036
(202) 463-5276

Their Attorneys

Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Reply Comments of GTE Service Corporation" have been mailed by first class United States mail, postage prepaid, on April 1, 1998 to the parties listed below:

Charles W Totto
Executive Director
Department of Commerce & Consumer Affairs
250 South King Street
Honolulu, HI 96813

William B. Barfield
BellSouth Corporaton
1155 Peachtree Street
Suite 1800
Atlanta, GA 30309

Michael F. Altschul
Cellular Telecommunications Industry Association
Suite 200
1250 Connecticut Avenue, NW
Washington, DC 20036

Richard A. Muscat
TX-ACSEC
333 Guadalupe
Suite 2-212
Austin, TX 78701

David C. Jatlow
Young & Jatlow
Suite 600
3200 N Street, NW
Washington, DC 20037

James R. Hobson
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, NW
Suite 750
Washington, DC 20005

Robert B. Kelly
Kelly & Povich, P.C.
Suite 800
3200 M Street, NW
Washington, DC 20037

Robert G. Oenning
Washington State Emergency Management
Enhanced 911
PO Box 40955
Olympia, WA 98504

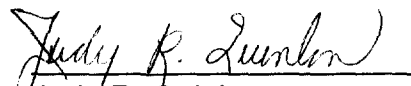
William L. Roughton
Associate General Counsel
PrimeCo Personal Communications
601 13th Street, NW
Suite 320 South
Washington, DC 20005

John T. Scott, III
Crowell & Moring
1001 Pennsylvania Avenue, NW
Washington, DC 20004

Douglas I. Brandon
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, NW
Washington, DC 20036

Sara F. Seidman
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo
701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004

Caressa D. Bennet
Bennet & Bennet, PLLC
1019 19th Street, NW, Suite 500
Washington, DC 20036


Judy R. Quinlan